



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

THE GREATER CHRISTCHURCH REGENERATION BILL

3/12/2015

Submission on the Greater Christchurch Regeneration Bill

1 Introduction

- 1.1 The New Zealand Law Society (Law Society) welcomes the opportunity to make a submission on the Greater Christchurch Regeneration Bill (Bill).
- 1.2 The Law Society supports the further progress the Bill represents towards restoring full democratic governance to Christchurch.
- 1.3 This submission sets out the Law Society's concerns about two powers provided for in the Bill:
 - (a) the powers of the Minister under clause 42 to suspend, amend or revoke legislative instruments; and
 - (b) the provision in clause 82(3) for the Minister to determine whatever amount he or she thinks fit by way of compensation for compulsorily acquired land.
- 1.4 Given the reduced need for emergency powers with the passage of time, there is not sufficient justification for these powers, which are inconsistent with constitutional principle.

2 Clause 42: Ministerial power to suspend, amend or revoke various legislative instruments

RIS option 3 recommended

- 2.1 Clause 42 provides for Ministerial powers (currently provided for under section 27, Canterbury Earthquake Recovery Act 2011) to suspend, amend or revoke RMA documents, council plans and other instruments. These powers are very broad, and cut across the legislative regime set up under the various other Acts that provide for the instruments that the Minister is empowered to suspend, revoke or amend.
- 2.2 Concentration of a power in the Executive to suspend, amend or revoke instruments that have been put in place under other legislation is:
 - (a) Inconsistent with good legislative practice, the principles of good government and the rule of law.
 - (b) Inconsistent with the objective of a return to standard processes and local leadership. The Regulatory Impact Statement (RIS) acknowledges that the need for urgency is now much less compelling to justify departures from standard processes, particularly when considered in conjunction with the range of planning powers also contained in the Bill.¹

¹ RIS at [102].

- 2.3 The RIS notes that “the ability to expedite direct changes is still seen as useful, albeit with increased local influence”.² Concentration of broad powers to a member of the Executive will almost always be “useful”, from the perspective of that Minister and achieving an outcome. That does not justify emergency powers of this breadth.
- 2.4 The consultation requirements under clauses 37, 38(2), 39 and 40 are not sufficient to enable the interest local citizens and local organisations have in the regeneration process and the powers that could be used by the Minister under clause 42 to be taken into account.
- 2.5 The RIS identifies two other options:³
- (a) Limiting the use of the power so that it may be used only on request of the Strategic Partners and Regenerate Christchurch (option 2).
 - (b) The joint exercise of the power by the Minister, the directly affected Council and ECan, with other Strategic Partners and Regenerate Christchurch consulted (option 3).
- 2.6 These options were rejected on the basis that
- the Crown is still bearing a very high level of financial risk from its ownership of red zone land and Christchurch CBD land, as well as other national interests in Canterbury’s recovery (such as wider economic development and delivery of public services). Central government therefore needs to retain sufficient power to represent the wider public interests of taxpayers, at this stage of the transition.
- 2.7 Option 3 enables Crown financial risk to be managed while still allowing the involvement of local government organisations in direct decision-making. This option involves the local leadership more directly in the exercise of powers that will affect them. The Minister’s involvement ensures the interests of central government and the wider public interest are protected. This option is the most consistent with the purpose of the legislation (in particular clause 3(c) and (d)), public accountability and continuing the transition of Christchurch back to standard processes and local leadership.

Recommendation

- 2.8 The Law Society recommends that, if such powers are still considered necessary in light of the urgency and scale of the recovery situation in Christchurch, clause 42 be amended so that the powers provided for are exercised jointly by the Minister, the directly affected Council and ECan, with other Strategic Partners and Regenerate Christchurch consulted [option 3].

² RIS at [103].

³ RIS at [107].

No requirement to consult with other Ministries/Departments

- 2.9 There is no clear requirement for the Minister to consult with other Ministries or Departments, such as the Department for Conservation, which may be affected by the exercise of the power.

Recommendation

- 2.10 The Law Society recommends that an amendment be made requiring notice to be given to, and comment sought from, any other Minister responsible for any enactment where there is a proposal to suspend, amend or revoke any document under that other enactment.

Technical amendments

- 2.11 It is not clear what clause 42(1) adds. The Law Society therefore recommends that clause 42(1) be deleted.

3 Clause 82(3): Minister's power to determine compensation payable for compulsorily acquired land

- 3.1 Under clause 82(3), in determining the amount of compensation payable by the Crown, the Minister is obliged to "have regard to" current market value and the relevant provisions of Part 5 of the Public Works Act 1981 but "is not limited to determining the amount of compensation on that basis alone and may determine whatever amount the Minister thinks fit".
- 3.2 The ability to determine "whatever amount the Minister thinks fit" can be contrasted with the power to determine compensation in this context under the Canterbury Earthquake Recovery Act 2011. Section 64(3) of that Act requires that compensation be set (i) having regard to its current market value as determined by a valuation carried out by a registered valuer and (ii), so far as practicable, in accordance with the relevant provisions of Part 5 of the Public Works Act 1981.
- 3.3 Other than in the context of a fault-based forfeiture regime, the offering of fair compensation for the public taking of private property is a fundamental constitutional principle. The obligation to first negotiate for voluntary purchase is not a sufficient check on the Minister's discretion. The Ministerial power to "determine whatever amount the Minister thinks fit" is apt to undermine the negotiating positions of affected persons in any event.
- 3.4 Nor are other proposed restrictions sufficient to address this concern. The requirements to exercise compulsory acquisition powers only where necessary to give effect to a regeneration plan or where territorial authorities agree, do not affect the amount of compensation payable. The right to appeal a determination does not justify the breadth of the power conferred and, given its breadth, is of limited value in any event.
- 3.5 The rationale for the clause 82(3) discretion is not clear. The RIS indicates that this provision may have been intended to allow payment of compensation above current

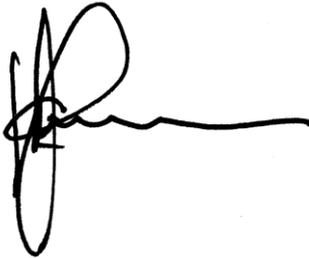
market value and above the amount provided under the Public Works Act.⁴ If this is the case, it should be reflected in the provision (especially given that it is not reflected in the Explanatory Note to the Bill). It is also possible that the rationale for this discretion may have been withheld on the grounds of prejudice to commercial negotiations.⁵

Recommendation

- 3.6 The Law Society recommends that clause 82 be amended so that either:
- (a) the Minister's power to determine compensation is consistent with the power provided for under section 64(3) of the Canterbury Earthquake Recovery Act 2011; or
 - (b) the provision makes it clear that it is intended to apply in situations where the Minister considers it appropriate to pay compensation above current market value and above the amount provided under the Public Works Act.

4 Conclusion

- 4.1 The Law Society does not wish to be heard but is happy to meet with officials advising on the Bill if the Committee considers that would be of assistance.

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

Chris Moore
President
3 December 2015

⁴ RIS at [143].

⁵ RIS at [148].